

AMENDED IN ASSEMBLY SEPTEMBER 1, 2005

AMENDED IN ASSEMBLY AUGUST 29, 2005

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN SENATE MAY 25, 2005

**SENATE BILL**

**No. 536**

**Introduced by Senator Bowen**

February 18, 2005

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An act to amend Section 25354.5 of the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 536, as amended, Bowen. Illegal Drug Lab Cleanup Account: methamphetamine.

Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substance, ~~and the~~.

*Existing law provides that for purposes of the hazardous waste control laws and the Carpenter-Presley-Tanner Hazardous Substance Account Act, a person who is found to have operated a site for the purposes of manufacturing an illegal controlled substance, as specified, is the generator of any hazardous substance at, or released from, the site. The department is authorized to adopt regulations to implement these provisions in consultation with local law enforcement and local environmental agencies. The department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup*

Account in the General Fund for this purpose. Existing law, the Budget Act of 2005, appropriates \$2,073,000 from the Illegal Drug Lab Cleanup Account to the Department of Toxic Substances Control.

Existing law prohibits a state agency from issuing, utilizing, or enforcing any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, that is a regulation, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is adopted as a regulation pursuant to the Administrative Procedure Act.

This bill would require the department to develop sampling and analytical methods for the collection of methamphetamine residue, and by October 1, 2007, to adopt a health-based target remediation standard for methamphetamine. The bill would require the department, by October 1, 2008, to the extent that funding is available, to adopt health-based target remediation standards for iodine, methyl iodide, and phosphine, and would authorize the department to develop additional health-based target remediation standards. The bill would require the department to adopt, by October 1, 2009, investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. ~~This bill would exclude the development of those methods, standards, and procedures from the requirements of the Administrative Procedure Act with regard to the adoption of regulations. The bill would require the department to develop those methods, standards, and procedures in a prescribed manner.~~

The bill would authorize the department to expend the funds in the Illegal Drug Lab Cleanup Account to develop those standards and procedures, including funding the interagency agreement, thereby making an appropriation by changing the purpose for which funds are appropriated from that account.

*This bill would additionally provide that for purposes of the Methamphetamine Contaminated Property Cleanup Act of 2005, that is proposed to be added by Assembly Bill 1078, a person who is found to have operated a site for the purposes of manufacturing an illegal controlled substance, as specified, is the generator of any hazardous substance at, or released from, the site.*

The bill would become operative only if AB 1078 is enacted and becomes effective on or before January 1, 2006.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION. 1. Section 25354.5 of the Health and Safety Code  
2 is amended to read:

3     25354.5. (a) A state or local law enforcement officer or  
4 investigator or other law enforcement agency employee who, in  
5 the course of an official investigation or enforcement action  
6 regarding the manufacture of any illegal controlled substance,  
7 comes in contact with, or is aware of, the presence of a substance  
8 that the person suspects is a hazardous substance at a site where  
9 an illegal controlled substance is or was manufactured, shall  
10 notify the department for the purpose of taking removal action, as  
11 necessary, to prevent, minimize, or mitigate damage that might  
12 otherwise result from the release or threatened release of the  
13 hazardous substance, except for samples required under Section  
14 11479.5 to be kept for evidentiary purposes.

15     (b) (1) Notwithstanding any other provision of law, upon  
16 receipt of a notification pursuant to subdivision (a), the  
17 department shall take removal action, as necessary, with respect  
18 to any hazardous substance that is an illegal controlled substance,  
19 a precursor of a controlled substance, a material intended to be  
20 used in the unlawful manufacture of a controlled substance and  
21 any container for such a material, a waste material from the  
22 unlawful manufacture of a controlled substance, or any other  
23 item contaminated with a hazardous substance used or intended  
24 to be used in the manufacture of a controlled substance. The  
25 department may expend funds appropriated from the Illegal Drug  
26 Lab Cleanup Account created pursuant to subdivision (f) to pay  
27 the costs of removal actions required by this section. The  
28 department may enter into oral contracts, not to exceed ten  
29 thousand dollars (\$10,000) in obligation, when, in the judgment  
30 of the department, immediate corrective action to a hazardous  
31 substance subject to this section is necessary to remedy or  
32 prevent an emergency.

33     (2) The department shall, as soon as the information is  
34 available, report the location of any removal action that will be  
35 carried out pursuant to paragraph (1), and the time that the  
36 removal action will be carried out, to the local environmental  
37 health officer within whose jurisdiction the removal action will

1 take place, if the local environmental officer does both of the  
2 following:

3 (A) Requests, in writing, that the department report this  
4 information to the local environmental health officer.

5 (B) Provides the department with a single 24-hour telephone  
6 number to which the information can be reported.

7 (c) (1) For purposes of Chapter 6.5 (commencing with  
8 Section 25100), *Chapter 6.9.1 (commencing with Section*  
9 *25400.10)*, or this chapter, any person who is found to have  
10 operated a site for the purpose of manufacturing an illegal  
11 controlled substance or a precursor of an illegal controlled  
12 substance is the generator of any hazardous substance at, or  
13 released from, the site that is subject to removal action pursuant  
14 to this section.

15 (2) During the removal action, for purposes of complying with  
16 the manifest requirements in Section 25160, the department, the  
17 county health department, the local environmental health officer,  
18 or their designee may sign the hazardous waste manifest as the  
19 generator of the hazardous waste. In carrying out that action, the  
20 department, the county health department, the local  
21 environmental health officer, or their designee shall be  
22 considered to have acted in furtherance of their statutory  
23 responsibilities to protect the public health and safety and the  
24 environment from the release, or threatened release, of hazardous  
25 substances, and the department, the county health department, the  
26 local environmental health officer, or their designee are not  
27 responsible parties for the release or threatened release of the  
28 hazardous substances.

29 (3) The officer, investigator, or agency employee specified in  
30 subdivision (a) is not a responsible party for the release or  
31 threatened release of any hazardous substances at, or released  
32 from, the site.

33 ~~(d) Except as provided in subdivision (c), the department~~

34 (d) *The department* may adopt regulations to implement this  
35 section in consultation with appropriate law enforcement and  
36 local environmental agencies.

37 (e) (1) The department shall develop sampling and analytical  
38 methods for the collection of methamphetamine residue.

39 (2) On or before October 1, 2007, the department, using  
40 guidance developed by the Office of Environmental Health

1 Hazard Assessment, shall develop a health-based target  
2 remediation standard for methamphetamine.

3 (3) On or before October 1, 2008, the department shall, to the  
4 extent funding is available, develop health-based target  
5 remediation standards for iodine, methyl iodide, and phosphine.

6 (4) To the extent that funding is available, the department,  
7 using guidance developed by the Office of Environmental Health  
8 Hazard Assessment, may develop additional health-based target  
9 remediation standards for additional precursors and byproducts  
10 of methamphetamine.

11 (5) On or before October 1, 2009, the department shall adopt  
12 investigation and cleanup procedures for use in the remediation  
13 of sites contaminated by the illegal manufacturing of  
14 methamphetamine. The procedures shall assure that  
15 contamination by the illegal manufacturing of methamphetamine  
16 can be remediated to meet the standards adopted pursuant to  
17 paragraphs (2) to (4), inclusive, to protect the health and safety of  
18 all future occupants of the site.

19 ~~(6) Notwithstanding any other provision of law, including, but~~  
20 ~~not limited to, Section 11340.5 of the Government Code, the~~  
21 ~~development of methods and standards and the adoption of~~  
22 ~~procedures pursuant to this subdivision are not subject to Chapter~~  
23 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~  
24 ~~Title 2 of the Government Code, and those methods, standards,~~  
25 ~~and procedures shall not be considered regulations for purposes~~  
26 ~~of that chapter.~~

27 *(6) The department shall implement this subdivision in*  
28 *accordance with subdivision (d).*

29 (f) The Illegal Drug Lab Cleanup Account is hereby created in  
30 the General Fund and the department may expend any money in  
31 the account, upon appropriation by the Legislature, to carry out  
32 the removal actions required by this section and to implement  
33 subdivision (e), including, but not limited to, funding any  
34 interagency agreement entered into with the Office of  
35 Environmental Health Hazard Assessment to provide guidance  
36 services. The account shall be funded by moneys appropriated  
37 directly from the General Fund.

38 (g) The responsibilities assigned to the department by this  
39 section apply only to the extent that sufficient funding is made  
40 available for that purpose.

1 SEC. 2. This act shall become operative only if Assembly  
2 Bill 1078 of the 2005-06 Regular Session of the Legislature is  
3 enacted and becomes effective on or before January 1, 2006.

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